

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-027
District Docket Nos. XIV-2012-
0663E, XIV-2013-0321E, and XIV-
2013-0338E
Docket No. DRB 14-112
District Docket Nos. XB-2012-0010E
and XB-2012-0025E

IN THE MATTERS OF :
NEIL L. GROSS :
AN ATTORNEY AT LAW : Decision

Decided: August 28, 2014

To the Honorable Chief Justice and Associate Justices of the
Supreme Court of New Jersey.

These default matters, which were consolidated for our
review and the purpose of discipline, were before us on
certifications of the record filed by the Office of Attorney
Ethics (OAE) and the District XB Ethics Committee (DEC),
pursuant to R. 1:20-4(f). For the reasons expressed below, we
recommend respondent's disbarment for the totality of his
conduct in both matters.

Respondent was admitted to the New Jersey bar in 1994. At the relevant times, he maintained a law office in Flanders, New Jersey.

On February 28, 2011, respondent was temporarily suspended for failure to cooperate with the OAE during an ethics investigation. In re Gross, 205 N.J. 82 (2011). He was reinstated on March 30, 2011. In re Gross, 205 N.J. 233 (2011).

Later in 2011, respondent was censured for misconduct in three client matters. There, he was found guilty of gross neglect, lack of diligence, failure to communicate with the clients, failure to safeguard client property, and failure to cooperate with disciplinary authorities. In one real estate transaction, respondent failed to keep copies of closing documents and to timely and correctly record a deed. In another, he failed to pursue a real estate transaction, in that he failed to review the contract, failed to contact the seller's attorney about a disputed radon test, failed to review the bank's commitment letter, and failed to reply to calls from his client and from the seller's attorney. He also failed to safeguard a client check. In the third matter, also a real estate transaction, respondent failed to retain copies of the

closing documents. That matter proceeded by way of default. In re Gross, 210 N.J. 115 (2012).

In 2012, in another default matter, respondent was again censured for grossly neglecting a real estate matter and failing to cooperate with disciplinary authorities. Following a real estate closing, respondent did not record the deed for almost ten months. In re Gross, 210 N.J. 115 (2012).

On October 23, 2012, respondent was again temporarily suspended for failure to cooperate with an ethics investigation. In re Gross, 212 N.J. 328 (2012). That suspension remains in effect to date.

In January 2014, in yet another default matter, respondent was suspended for six months for failing to promptly deliver funds to a client or third person, knowingly making a false statement of material fact to a tribunal, practicing law while ineligible, knowingly making a false statement of material fact to a disciplinary authority, failing to reply to a lawful demand for information from a disciplinary authority, and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. Specifically, respondent held in escrow over \$16,000 for payment to vendors in a real estate transaction, despite telling them that he would send them the money. He also misled the Supreme

Court, when he petitioned for reinstatement from his February 28, 2011 temporary suspension, by misrepresenting that he had sent a check to the New Jersey Lawyers' Fund for Client Protection (the Fund) to cure his ineligibility for failure to pay the annual attorney assessment. Finally, he continued to make deposits and withdrawals from his trust account, despite a warning from the Court that he was still ineligible to practice law. In re Gross, 216 N.J. 401 (2014). The Court also precluded respondent from applying for reinstatement until he had fully cooperated with the OAE in all matters and ordered him to provide proof of fitness to practice law, prior to reinstatement.

The facts of these matters are as follows:

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The three-count complaint charged respondent with practicing law while suspended (RPC 5.5(a)(1)), misrepresenting to clients that he was authorized to practice law and collecting attorney's fees (RPC 8.4(c)), and failing to file a R. 1:20-20 affidavit, following his 2012 temporary suspension (RPC 8.1(b) and RPC 8.4(d)).

Service of process was proper in this matter. On December 18, 2013, the OAE sent a copy of the complaint to respondent's last known home address, listed in the attorney registration records. The complaint was sent by regular and certified mail. The signed certified mail return receipt was returned to the OAE, indicating delivery on December 23, 2013. It bears an illegible signature that appears to be that of respondent. The regular mail was not returned.

On January 15, 2014, the OAE sent a second letter to the same address, by regular mail, notifying respondent that, if he did not file an answer within five days of the date of the letter, the record would be certified directly to us for the imposition of sanction. The letter was not returned to the OAE.

As of February 12, 2014, the date of the certification of the record, respondent had not filed an answer to the complaint.

Count One

On October 5, 2012, respondent was served with a Supreme Court order to show cause as to why he should not be temporarily suspended. On October 22, 2012, respondent appeared before the Court and sought an adjournment, which was denied. The Court temporarily suspended him, effective October 23, 2012.

On October 23, 2012, the Supreme Court Clerk's Office served on respondent both the order of suspension and the order denying the adjournment request, by regular and certified mail sent to both his office and home addresses. Respondent was also served by email. Nonetheless, on October 24, 2012, respondent represented Wright and Gina Goss and Christine Catello at a real estate closing in Hope, New Jersey.

Respondent's practicing law while suspended continued through June 2013. He acted as an attorney in the following transactions:

- On February 1, 2013, four months after his suspension, and continuing until at least April 29, 2013, respondent represented Jonathan Tettambel in the purchase of property in Long Valley, New Jersey.
- Beginning with his attorney review letter on March 18, 2013, five months after his suspension, respondent represented Beniamino and Antonella Carfagnini in the sale of their home in Chester, New Jersey. On May 20, 2013, respondent notarized the affidavits of title of the Carfagninis as "Neil Gross, Atty at Law State of NJ." The HUD-1 for the

Carfagnini closing, dated May 28, 2013, itemized respondent's legal fee of \$950 on line 1110.

On May 23, 2013, the scheduled closing date for the Carfagnini matter, title agent Christopher Mara called the OAE to inquire if respondent was still suspended, since he was on his company's "Do Not Use" list. Later that same day, respondent called the OAE to inquire as to how he could have his license reinstated. During that conversation, respondent confirmed his home address. On May 28, 2013, the OAE sent a letter to respondent, reiterating the requirements for him to apply for reinstatement.

- On March 19, 2013, five months after his suspension, and continuing through July 11, 2013, when the contract was canceled, respondent represented Dessin & Lavache in the purchase of property in Hackettstown, New Jersey.
- On or about May 6, 2013, when respondent sent his attorney review letter to counsel for the seller, he undertook the representation of Eoghan and Alexandria O'Shea in the purchase of property

located in Long Valley, New Jersey. On May 22, 2013, respondent sent a letter to counsel for the seller about repairs to the property, as a result of the home inspection. Then, on May 24, 2013, the day after respondent called the OAE to inquire about his license reinstatement, he sent another letter, on his attorney letterhead, under his signature, to counsel for O'Shea. The O'Shea closing was scheduled for the week of June 3, 2013, but was rescheduled, when counsel for the sellers learned of respondent's suspension.

Count Two

On November 7, 2012, the OAE received a letter from an attorney, reporting that respondent had represented a purchaser in a closing on October 24, 2012, which was one day after the commencement of his temporary suspension. On February 25, 2013, the OAE sent a letter to respondent, advising him of a demand audit at the OAE offices, on March 14, 2013, and instructing him to bring his entire file for Wright and Gina Goss and his complete financial records for the period January 1, 2012

through the present. Respondent failed to appear for the demand audit.

On June 5, 2013, the OAE received a letter from an attorney, stating that respondent had represented a purchaser in a closing scheduled for later that week, well after the date of his temporary suspension. On July 16, 2013, the OAE sent a letter to respondent, requesting his written response to that allegation by July 31, 2013. Respondent did not comply with the OAE's request.

On August 1, 2013, the OAE sent a letter to respondent about a scheduled demand audit to take place at the OAE offices, on August 14, 2013. Respondent failed to appear for the demand audit. On September 9, 2013, the OAE received a call from Marc J. Gross, Esq., indicating that he would be representing respondent, his brother. That same day, Gross also wrote to the Supreme Court Clerk's office, requesting an adjournment of an order to show cause issued in connection with an unrelated disciplinary matter. The OAE consented to the adjournment, which was granted.

On September 12, 2013, the OAE sent to Gross all of its outstanding requests related to the several docketed matters against respondent and scheduling a demand audit for September

23, 2013. Although Gross and respondent appeared at the OAE for the demand audit, which had been re-scheduled to October 9, 2013, respondent did not bring all of the requested documents. Gross advised the OAE that, if his brother did not cooperate with him, he would be withdrawing as counsel.

On October 23, 2013, the OAE followed up with Gross about the outstanding information it had requested. The OAE sent a follow-up letter to Gross, on October 30, 2013, because respondent still had not produced the outstanding documents. On November 5, 2013, Gross withdrew as counsel for respondent.

To date, respondent has not supplied any of the outstanding documents to the OAE.

Count Three

The Court's order of October 23, 2012 directed respondent to comply with R. 1:20-20, which provides, in relevant part, that a suspended attorney "shall within 30 days after the date of the order of suspension (regardless of the effective date thereof) file with the [OAE] Director the original of a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the

provisions of this rule and the Supreme Court's order." Respondent failed to do so.

On August 2, 2013, the OAE sent a letter to respondent's home and office addresses listed on the attorney registration records and to an additional address, presumed to be respondent's home address as well, advising him of his responsibility to file the affidavit of compliance with R. 1:20-20 and requesting a response by August 16, 2013. The letter was sent by regular and certified mail. The certified letter sent to respondent's office was returned marked "Unclaimed." The regular mail sent to the office address was not returned. The certified letter sent to the home address listed in the attorney registration records was returned marked "Not Deliverable As Addressed - Unable to Forward." The regular mail sent to that address was not returned. The certified letter sent to the additional home address was returned marked "Not Deliverable As Addressed - Unable to Forward." The USPS website shows that the letter was unclaimed. The regular mail sent to that address was not returned to the OAE.

As indicated before, on September 12, 2013, the OAE sent a letter to counsel for respondent, listing all of the outstanding documents requested of respondent, including the R. 1:20-20

affidavit. Respondent did not file the required affidavit or otherwise comply with the OAE's requests for his records.

* * *

The complaint alleges sufficient facts to support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Despite being temporarily suspended by the Supreme Court for his failure to cooperate with an ethics investigation, respondent continued to practice law by representing six clients, between October 24, 2012 and early June 2013, and charging them a fee. In fact, even after respondent called the OAE to inquire about the proper procedure to be reinstated, he continued to represent clients. All the while, he never notified his clients or adversaries about his suspension.

Further, respondent failed to comply with the OAE's multiple requests for information about the grievances alleging that he was practicing law during his suspension and also about his attorney records. He also did not appear at the first demand audit and, when he did appear, he did not produce all of

the records that the OAE had requested. He thereafter discontinued his brief cooperation with the OAE.

Finally, respondent has failed to comply with the Court's order of suspension and with the requirements of R. 1:20-20 and failed to answer the formal ethics complaint.

Altogether, respondent violated RPC 5.5(a)(1), RPC 8.1(b), RPC 8.4(c), and RPC 8.4(d).

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The two-count complaint charged respondent with violations of RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(a), now (b) (failure to communicate with the client), and R. 1:20-3(g) (more properly, RPC 8.1(b)) (failure to cooperate with disciplinary authorities).

Service of process was proper in this matter. On January 13, 2014, the DEC sent a copy of the complaint to respondent's home address by regular and certified mail. The certified mail was returned as unclaimed. The regular mail was not returned.

On February 17, 2014, the DEC sent a second letter to respondent's home address, by regular and certified mail, advising him that he had five days to file his verified answer to the complaint and that, if he failed to do so, the record

would be certified to us for the imposition of discipline. Neither the certified mail nor the regular mail has been returned.

As of April 2, 2014, the date of the certification of the record, respondent had not filed an answer to the complaint.

Count One (The Cirello Matter)

In July 2010, Kristen Cirello retained respondent to represent her in the purchase of a condominium. Thereafter, respondent failed to answer Cirello's telephone calls or emails and repeatedly moved the closing date. Only when Cirello appeared at respondent's office did she receive the courtesy of a response. On July 19, 2010, Cirello closed on the property, with respondent in attendance.

Subsequently, respondent failed to timely pay the homeowners' association dues on the condominium, causing Cirello to be assessed late fees. He also failed to record the deed, as a result of which Cirello was unable to receive her homestead rebate or transfer clear title, when she sold the property.

Count Two (The Dostal Matter)

In May 2012, Brian and Sandra Dostal hired respondent to represent them in the sale of their house. Respondent failed to prepare a correct HUD-1 statement and failed to communicate with the Dostals about the closing and repairs to the property.

After the closing, additional repairs were needed. Respondent failed to represent the Dostals' interests in the post-closing issues and failed to keep them apprised of any progress made in their matter. According to the complaint, he also "failed to obtain the return of deposits and the Dostals were forced to retain alternate counsel."

Respondent failed to cooperate with disciplinary authorities during the investigation of this matter.

* * *

The complaint alleges sufficient facts to support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

In the Cirello matter, respondent's failure to timely pay the homeowners' association dues and to record the deed constituted lack of diligence, a violation of RPC 1.3. His

failure to adequately communicate with Cirello constituted a violation of RPC 1.4(b). Finally, his failure to cooperate with the investigation of the grievance violated RPC 8.1(b).

In the Dostal matter, respondent's failure to protect the interests of his clients in resolving post-closing issues, failure to keep them informed of his progress in solving those problems, and failure to cooperate with the ethics investigation violated RPC 1.3, RPC 1.4(b), and RPC 8.1(b).¹ We do not find, however, that respondent violated RPC 1.1(b). The facts alleged in the complaint do not support a charge of a pattern of neglect. For a finding of a pattern of neglect, at least three instances of neglect are required. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16).

We now turn to the question of the appropriate degree of discipline for the aggregate of respondent's violations in both matters.

¹ Although the complaint in this matter did not cite RPC 1.4(b), the allegations gave respondent ample notice that he was being charged with failure to communicate with his clients. Therefore, no due process violations will occur from a finding of a violation of that rule.

Respondent's most serious ethics offense was practicing law while suspended. He represented at least six clients, starting on the day after his temporary suspension and for a period of eight months. The discipline for practicing during a period of suspension ranges from a lengthy suspension to disbarment, depending on the presence of other misconduct and mitigating or aggravating factors, including the attorney's disciplinary history. See, e.g., In re Bowman, 187 N.J. 84 (2006) (one-year suspension for attorney who, during a period of suspension, maintained a law office where he met with clients, represented two clients in court, and acted as Planning Board solicitor for two municipalities; prior three-month suspension; extremely compelling circumstances considered in mitigation); In re Marra, 170 N.J. 411 (2002) (attorney suspended for one year for performing legal work in two cases while suspended and substantial recordkeeping violations, despite having previously been the subject of a random audit; on the same day that the attorney received the one-year suspension, he received a six-month suspension and a three-month suspension for separate violations, having previously received a private reprimand, a reprimand, and a three-month suspension); In re Lisa, 158 N.J. 5 (1999) (one-year suspension for attorney who appeared before a

New York court during his New Jersey suspension; in imposing only a one-year suspension, the Court considered a serious childhood incident that made the attorney anxious about offending other people or refusing their requests; out of fear of offending a close friend, he agreed to assist as "second chair" in the New York criminal proceeding; there was no venality or personal gain involved; the attorney did not charge his friend for the representation; prior admonition and three-month suspension); In re Wheeler, 140 N.J. 321 (1995) (two-year suspension imposed on attorney who practiced law while serving a temporary suspension for failure to refund a fee to a client; specifically, although the attorney did not charge a legal fee, he counseled a client on two occasions and called the other party's lawyer on four occasions; the attorney also made multiple misrepresentations to clients, displayed gross neglect and pattern of neglect, engaged in negligent misappropriation and in a conflict of interest situation, and failed to cooperate with disciplinary authorities); In re Marra, 183 N.J. 260 (2005) (three-year suspension for attorney found guilty of practicing law in three matters while suspended; the attorney also filed a false affidavit with the Court stating that he had refrained from practicing law during a prior suspension; the attorney had

received a private reprimand, a reprimand, two three-month suspensions, a six-month suspension, and a one-year suspension also for practicing law while suspended); In re Cubberley, 178 N.J. 101 (2003) (three-year suspension for attorney who solicited and continued to accept fees from a client after he had been suspended, misrepresented to the client that his disciplinary problems would be resolved within one month, failed to notify the client or the courts of his suspension, failed to file the affidavit of compliance required by R. 1:20-20(a), and failed to reply to the OAE's requests for information; the attorney had an egregious disciplinary history: an admonition, two reprimands, a three-month suspension, and two six-month suspensions); In re Wheeler, 163 N.J. 64 (2000) (attorney received a three-year suspension for handling three matters without compensation, with the knowledge that he was suspended, holding himself out as an attorney, and failing to comply with Administrative Guideline No. 23 (now R. 1:20-20) relating to suspended attorneys; prior one-year suspension on a motion for reciprocal discipline and, on that same date, a two-year consecutive suspension for practicing while suspended); In re Kasdan, 132 N.J. 99 (1993) (three-year suspension for attorney who continued to practice law after being suspended and after

the Court expressly denied her request for a stay of her suspension; she also failed to inform her clients, her adversary and the courts of her suspension, deliberately continued to practice law, misrepresented her status as an attorney to adversaries and to courts where she appeared, failed to keep complete trust records, and failed to advise her adversary of the whereabouts and amount of escrow funds; prior three-month suspension); In re Beltre, 130 N.J. 437 (1992) (three-year suspension for attorney who appeared in court after having been suspended, misrepresented his status to the judge, failed to carry out his responsibilities as an escrow agent, lied to the Board about maintaining a bona fide office, and failed to cooperate with an ethics investigation; prior three-month suspension); In re Walsh, Jr., 202 N.J. 134 (2010) (attorney disbarred on a certified record for practicing law while suspended by attending a case conference and negotiating a consent order on behalf of five clients and making a court appearance on behalf of seven clients; the attorney was also guilty of gross neglect, lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities during the investigation and processing of the grievances; the attorney failed to appear on an order to

show cause before the Court; extensive disciplinary history: reprimand, censure, three-month suspension, and six-month suspension); In re Olitsky, 174 N.J. 352 (2002) (disbarment for attorney who agreed to represent four clients in bankruptcy cases after he was suspended, did not advise them that he was suspended from practice, charged clients for the prohibited representation, signed another attorney's name on the petitions without that attorney's consent and then filed the petitions with the bankruptcy court; in another matter, the attorney agreed to represent a client in a mortgage foreclosure after he was suspended, accepted a fee, and took no action on the client's behalf; in yet another matter, he continued to represent a client in a criminal matter; the attorney also made misrepresentations to a court and was convicted of stalking a woman with whom he had had a romantic relationship; prior private reprimand, admonition, two three-month suspensions, and two six-month suspensions); In re Costanzo, 128 N.J. 108 (1992) (attorney disbarred for practicing law while serving a temporary suspension for failure to pay administrative costs incurred in a prior disciplinary matter and for misconduct involving numerous matters, including gross neglect, lack of diligence, failure to keep clients reasonably informed and to explain matters in order

to permit them to make informed decisions about cases, pattern of neglect, and failure to designate hourly rate or basis for fee in writing; prior private reprimand and reprimand); and In re Goldstein, 97 N.J. 545 (1984) (attorney disbarred for misconduct in eleven matters and for practicing law while temporarily suspended by the Court and in violation of an agreement with the Disciplinary Review Board that he limit his practice to criminal matters).

Respondent's conduct closely parallels that of the attorney in Olitsky, who was disbarred. Like Olitsky, respondent represented six clients during his period of suspension. Although Olitsky had a more egregious disciplinary record than respondent -- a private reprimand, an admonition, two three-month suspensions, and two six-month suspensions, compared to respondent's two censures and six-month suspension -- and although Olitsky also improperly signed the name of another attorney in four bankruptcy petitions and stalked a prior paramour, Olitsky did not default in any of his disciplinary matters. In turn, respondent has demonstrated a troubling pattern of disrespect for disciplinary authorities. Not only was he temporarily suspended twice for failure to cooperate with ethics investigations, but all of his disciplinary matters

proceeded as defaults. The two present matters constitute his fourth and fifth brushes with the disciplinary system. They are also his fourth and fifth defaults. In our view, nothing short of disbarment is justified for respondent's persistent refusal to abide by the rules of the profession and obvious disregard for the ethics system.

One might argue that respondent's conduct was akin to that of attorney Cubberley, who also defaulted in five disciplinary matters and whose ethics history was more serious than respondent's -- an admonition, two reprimands, a three-month suspension, and a six-month suspension. Cubberly received a three-year suspension. But Cubberley represented only one client during his suspension. Respondent represented six clients, on six different occasions, over a period of eight months. His conduct in this regard was considerably more defiant than Cubberley's. Each time that respondent accepted the representation of a client, he formed the clear intent to violate the Supreme Court order of suspension. In other words, he displayed a pattern of contempt for the Court. Therefore, the three-year suspension imposed in Cubberley does not adequately address the totality of respondent's actions.


For his pattern of disrespect for disciplinary authorities,

for the Court, and for the profession at large, respondent must be disbarred. We so recommend to the Court.

Member Baugh did not participate. Member Rivera abstained.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel


**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matters of Neil L. Gross
Docket Nos. DRB 14-027 and DRB 14-112

Decided: August 28, 2014

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Abstained	Did not participate
Frost	X					
Baugh						X
Clark	X					
Gallipoli	X					
Hoberman	X					
Rivera					X	
Singer	X					
Yamner	X					
Zmirich	X					
Total:	7				1	1


Ellen A. Brodsky
Chief Counsel